



Order 2001-8-13

Served: August 15, 2001

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 10th day of August, 2001

Essential air service at

**TOPEKA, KANSAS**

under 49 U.S.C. 41731 *et seq.*

Docket OST-96-1352- 24

**ORDER TO SHOW CAUSE  
TENTATIVELY RESELECTING CARRIER  
AND ESTABLISHING NEW SUBSIDY RATE**

**Summary**

By this order, the Department is tentatively reselecting Air Midwest, Inc., d/b/a US Airways Express, to provide essential air service at Topeka, Kansas, for the two-year period beginning January 1, 2002, at an annual subsidy rate of \$621,872. The order also provides for objections or competing proposals from other interested carriers.

**Background**

By Order 2000-7-35, July 28, 2000, the Department reselected Air Midwest to provide subsidized service at the Topeka for the two-year period ending December 31, 2001, by operating 24 nonstop round trips a week between Topeka and Kansas City with 19-seat Beech 1900 aircraft at an annual subsidy rate of \$722,199.<sup>1</sup>

Under our normal procedures when nearing the end of a subsidy rate term, we contact the incumbent carrier to determine whether it is interested in continuing service and whether it will continue to require subsidy. We usually negotiate a new subsidy rate with the carrier, issue an order tentatively reselecting it for a new rate term at the agreed rate, and direct other parties to show cause why we should not finalize our tentative decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order; if any such proposals are filed, we process them as a competitive case. Consistent with this practice, we invited Mesa Air Group, Air Midwest's parent company, to submit a proposal for the continuation of service at Topeka beginning January 1, 2002.

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<sup>1</sup> See Appendix A for a map.

### **Carrier Proposal**

Mesa submitted a proposal in response to our request. As a result of discussions with Department staff, Mesa has agreed to a new rate term for the two-year period beginning January 1, 2002. Specifically, Mesa has agreed to either of two options. Under Option A, Air Midwest would continue to operate 24 Topeka-Kansas City round trips a week at an annual subsidy rate of \$910,508. Under Option B, Air Midwest would instead operate 18 round trips a week at an annual subsidy rate of \$621,872.

### **Decision**

After a thorough review of the proposal and Air Midwest's service history, we have tentatively decided to select Option B and authorize subsidy for 18 round trips a week for the two-year period beginning January 1, 2002. The proposed rate appears reasonable for the service at issue and the carrier's performance continues to be satisfactory.<sup>2</sup>

In choosing Option B, we have concluded that Topeka's traffic cannot justify the higher level of service that we have been supporting there. In Order 2000-7-35, we noted that Topeka had averaged as many as 35 enplanements a day as recently as 1993, and we hoped that continuing a service level of 24 round trips a week would help traffic rebound to its previous level. But traffic has not responded. During the year ended March 31, 2001, the most recent 12-month period for which data are available, Topeka averaged just 6.7 enplanements a day -- less than two passengers per flight.<sup>3</sup> At the same time, increasing operating expenses are requiring substantially more subsidy to support the community's service: 24 round trips a week would now require nine times the subsidy necessary as recently as 1999.<sup>4</sup> As we have noted before, Topeka is only 71 highway miles via Interstates 70 and 435 from Kansas City International Airport, a medium hub, and it appears that local commuter service to Kansas City cannot compete with the highway.<sup>5</sup>

We should further note that the Administration has proposed a \$50 million program budget for fiscal year 2002 -- *i.e.*, beginning October 1, 2001. The proposed budget includes revisions to the subsidy-eligibility standards that would result in 17 communities losing their eligibility. Topeka is one of the 17, by virtue of its being within 100 highway miles of a medium hub airport at Kansas City. If Congress ultimately passes the Administration's proposal, Topeka will lose its eligibility and this rate order will not become effective.<sup>6</sup>

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<sup>2</sup> Appendix B contains details of Air Midwest's compensation requirement for 18 round trips a week.

<sup>3</sup> See Appendix C for historical traffic data; enplanements represent one-half of total origin-and-destination traffic, and averages are based on 313 weekdays and weekends each year.

<sup>4</sup> See Order 97-10-13, October 17, 1997, which established an annual subsidy rate for 24 round trips a week of \$102,362 for a period roughly coinciding with calendar year 1999.

<sup>5</sup> In fact, the Department is statutorily prohibited from subsidizing service at communities located within 70 highway miles of the nearest large or medium hub. If Topeka were a mere two miles closer to Kansas City International Airport, the law would prevent us from subsidizing any service whatsoever at the community.

<sup>6</sup> For a full discussion, see Order 2001-8-9, August 7, 2001.

### **Carrier Fitness**

49 U.S.C. 41737(b) and 41738 require that we find an air carrier fit, willing and able to provide reliable service before we compensate it for providing essential air service. We last found Air Midwest fit by Order 2000-10-21, October 19, 2000, in connection with its subsidized essential air service at Dodge City, Garden City, Great Bend and Hays, Kansas. Since then, the Department has routinely monitored the carrier's continuing fitness, and no information has come to our attention that would lead us to question its ability to operate in a reliable manner. Based on our review of its most recent submissions, we find that Air Midwest continues to have available adequate financial and managerial resources to provide quality service at the communities at issue here, and that it continues to possess a favorable compliance disposition. The Federal Aviation Administration has advised us that the carrier is conducting its operations in accordance with 14 CFR Part 121, and knows of no reason why we should not find that Air Midwest remains fit.

### **Responses to Tentative Decision**

As usual, we will allow interested parties 20 days from the date of this order to object to our decision or to file objections or competing proposals. If no timely objections or competing proposals are filed, this order will automatically become final. We expect persons objecting to our tentative decision to support their objections with relevant and material facts. We will not entertain general, vague or unsupported objections.

Carriers interested in filing competing proposals, with or without subsidy requests, should file them within the 20-day period set for objections. At the end of the 20-day period, our staff will docket any competing proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. Each applicant, including the incumbent, will then have an opportunity to finalize its proposal in rate discussions with Department staff before we seek final community comments. We will give full consideration to all proposals that are timely filed. As a general matter, we request proposals that contemplate an appropriate level of service to Kansas City or any other suitable hub with twin-engine aircraft operated by two pilots.

### **Traffic and Service History**

The community's recent traffic results are discussed above. Air Midwest has provided Topeka-Kansas City service since May 1991, when it replaced the Topeka-St. Louis service operated by Trans States Airlines, Inc., d/b/a Trans World Express.<sup>7</sup> Air Midwest initially operated its service without subsidy, but the Department began subsidizing it in 1992.<sup>8</sup>

### **Procedures for Filing Competitive Proposals**

For interested carriers unfamiliar with our procedures and recommended form for supplying the necessary information, we have prepared two explanatory documents that we will make available

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<sup>7</sup> See Order 91-4-49, April 26, 1991.

<sup>8</sup> See Orders 92-3-8, March 3, 1992, and 92-11-51, November 27, 1992.

upon request. The first describes the process for handling carrier replacement cases under 49 U.S.C. 41734(f), and discusses in detail the process of requesting proposals, conducting reviews of applicants, and selecting a replacement carrier. The second is an evidence request containing an explanatory statement, a copy of Part 204 of our regulations (14 CFR 204), and schedules setting forth our recommended form for submitting data required for calculating compensation and determining the financial and operational ability of applicants to provide reliable essential air service. (Section 204.4 describes the fitness information required of all applicants for authority to provide essential air service.) Applicant carriers that have already submitted this information in another case need only resubmit it if a substantial change has occurred. However, if there are more recent data or if there have been any changes to the information on file, carriers should provide updates of those information elements. Interested carriers that need to obtain copies of these documents may contact the Office of Aviation Analysis at (202) 366-1053.

### **Other Carrier Requirements**

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.<sup>9</sup> Consequently, all carriers receiving Federal subsidy for essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. All carriers that plan to submit proposals involving subsidy should submit the required certifications along with their proposals. Interested carriers requiring more detailed information regarding these requirements as well as copies of the certifications should contact the Office of Aviation Analysis at (202) 366-1053. The Department is prohibited from paying subsidy to carriers that do not submit these documents.

### **Community and State Comments**

If we receive competing proposals, the community and state are welcome to submit comments on the proposals at any time. Early in the proceeding, comments on the proposals' strengths and weaknesses would be particularly helpful, and the civic parties may also express a preference for a particular carrier, if they choose. In any event, after conducting rate conferences with all

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<sup>9</sup> The regulations applicable to each of these three areas are (1) 49 CFR Part 20, New Restrictions on Lobbying, implementing title 31, United States Code, section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions"; (2) 49 CFR Part 29, Subpart F, Drug-Free Workplace Requirements (Grants), implementing the Drug-Free Workplace Act of 1988; and (3) 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964; 49 CFR Part 27, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance; and 14 CFR Part 382, Nondiscrimination on the basis of handicap in Air Travel.

applicants, we will provide a summary of the conference results to the civic parties and ask them to file their final comments.<sup>10</sup>

This order is issued under authority delegated in 49 CFR 1.56a(f).

**ACCORDINGLY,**

1. We tentatively reselect Air Midwest, Inc., d/b/a US Airways Express, to provide essential air service at Topeka, Kansas, as described in Appendix D, for the period from January 1, 2002, through December 31, 2003;
2. We tentatively set the final rate of compensation for Air Midwest, Inc., d/b/a US Airways Express, for the provision of essential air service at Topeka, Kansas, as described in Appendix D, for the period from January 1, 2002, through December 31, 2003, payable as follows: for each month during which essential air service is provided, the amount of compensation shall be subject to the weekly ceiling set forth in Appendix D, and shall be determined by multiplying the subsidy-eligible arrivals and departures completed during the month by \$337.97;<sup>11</sup>
3. We direct Air Midwest, Inc., d/b/a US Airways Express, to retain all books, records, and other source and summary documentation to support claims for payment, and to preserve and maintain such documentation in a manner that readily permits its audit and examination by representatives of the Department. Such documentation shall be retained for seven years or until the Department indicates that the records may be destroyed. Copies of flight logs for aircraft sold or disposed of must be retained. The carrier may forfeit its compensation for any claim that is not supported under the terms of this order;
4. We find that Air Midwest, Inc., d/b/a US Airways Express, continues to be fit, willing and able to operate as a commuter air carrier and capable of providing reliable essential air service at Topeka, Kansas;
5. We direct any interested persons having objections to the selection of Air Midwest to provide essential air service as described in ordering paragraph 1 above, at the rate set forth in ordering

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<sup>10</sup> In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not normally hold rate conferences. Instead, we rely on the carrier's subsidy-free service as proposed.

<sup>11</sup> See Appendix D for the calculation of this rate, which assumes the use of the aircraft designated. If the carrier reports a significant number of aircraft substitutions, revision of this rate may be required.

paragraph 2 above, to file such objections or competing service proposals no later than 20 days from the date of service of this order;<sup>12</sup>

6. If we receive objections or competing proposals within the 20-day period, Air Midwest will be compensated at the subsidy rate set forth in ordering paragraph 2 above as a final rate until all objections are resolved;

7. We will afford full consideration to the matters and issues raised in any timely and properly filed objections and service proposals before we take further action.<sup>13</sup> If no objections or competing service proposals are filed, all further procedural steps will be deemed waived and this order shall become effective on the twenty-first day after its service date;

8. This docket will remain open until further order of the Department; and

9. We will serve copies of this order on the mayor and airport manager of Topeka, Kansas, Air Midwest, Inc., d/b/a US Airways Express; and the persons listed in Appendix E.

By:

**SUSAN McDERMOTT**  
Deputy Assistant Secretary for Aviation  
and International Affairs

(SEAL)

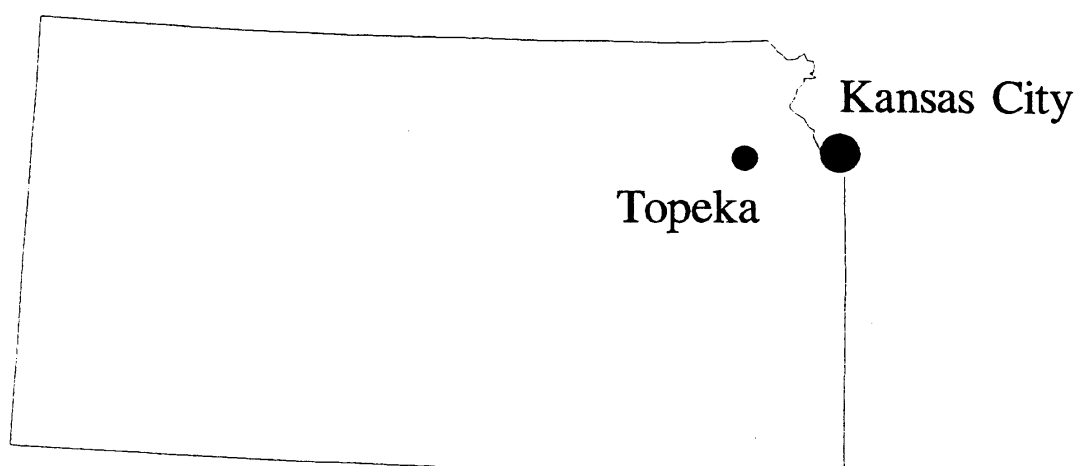
*An electronic version of this document is available  
on the World Wide Web at <http://dms.dot.gov>*

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<sup>12</sup> Objections should be filed with the Documentary Services and Media Management Division, SVC-124, Room PL-401, Department of Transportation, 400 7th Street S.W., Washington DC 20590. Proposals to provide essential air service should be filed with the Chief, EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6417I, Department of Transportation, at the same address. Questions regarding filings in response to this order may be directed to Dennis J. DeVany at (202) 366-1061.

<sup>13</sup> Since we are providing for the filing of objections to this order, we will not entertain petitions for reconsideration.

## TOPEKA, KANSAS



# APPENDIX B

## AIR MIDWEST, INC., d/b/a US AIRWAYS EXPRESS ANNUAL COMPENSATION REQUIREMENT FOR ESSENTIAL AIR SERVICE AT TOPEKA, KANSAS (At 98 percent completion)

Departures		1,840	<u>1/</u>
Block Hours		920	<u>1/</u>
Revenue passenger-miles		241,395	<u>1/</u>
Available seat-miles		1,922,800	<u>1/</u>
Operating Revenues:			
Passenger: 4,389 psgrs at \$60.54	\$	265,710	
Other (at 1.0% of psgr rev)		2,657	
Total Operating Revenues			\$ 268,367
Operating Expenses:			
Direct: Flying Operations (\$135.58/BH)	\$	124,734	
Fuel & Oil (\$133.19/BH)		122,535	
Other Flight Operations (\$14.01/BH)		12,889	
Aircraft Ownership (\$138.67/BH)		127,576	
Maintenance (\$258.06/BH)		237,415	
Total Direct Expenses			625,149
Indirect: Traffic-related (\$0.079/RPM)	\$	19,070	
Departure-related (\$97.50/dpt)		179,400	
Capacity-related (\$0.010/ASM)		19,228	
Advertising		5,000	
Total Indirect Expenses			<u>222,698</u>
Total Operating Expenses			\$ 847,847
Operating Loss			\$ 579,480
Profit Element (5.0% of Total Operating Expenses)			\$ 42,392
Annual Compensation Requirement			\$ 621,872

1/ Calculated as follows:

Departures: 313 service days x 6 dpts x .98 comp = 1,840  
Block Hours: 1,840 dpts x 30 min/60 = 920  
RPMs: 4,389 psgrs x 55 mi = 241,395  
ASMs: 1,840 dpts x 19 seats x 55 mi = 1,922,800



## APPENDIX C

TOPEKA, KANSAS  
HISTORICAL TRAFFIC DATA

<u>YEAR</u>	<u>ENPLANEMENTS</u>	<u>AVG.</u>
1992	9,475	30.3
1993	10,903	34.8
1994	7,867	25.1
1995	5,518	17.6
1996	2,909	9.3
1997	1,283	9.8
1998	3,393	10.8
1999	2,952	9.4
2000	2,195	7.0
YE 3/31/01	2,097	6.7
2000 1st Qtr	926	
2nd Qtr	1,124	
3rd Qtr	1,067	
4th Qtr	1,272	
2001 1st Qtr	730	

SOURCE: Bureau of Transportation Statistics Form 298-C, Schedule T-1, and carrier reports. Enplanements represent one-half of total origin-and-destination traffic, and averages are based on 313 weekdays and weekends each year. Data for 1997 are incomplete, representing the last five months of the year only; the 1997 average is based on 131 weekdays and weekends.

AIR MIDWEST, INC., d/b/a US AIRWAYS EXPRESS  
ESSENTIAL AIR SERVICE  
AT TOPEKA, KANSAS

EFFECTIVE PERIOD	January 1, 2002, through December 31, 2003
SERVICE	18 nonstop round trips to Kansas City each week
AIRCRAFT TYPE	Beech 1900 (19 seats)
TIMING OF FLIGHTS	Flights must be well-timed and well-spaced to ensure full compensation
SUBSIDY RATE PER ARRIVAL/DEPARTURE	\$337.97 <u>1/</u>
COMPENSATION CEILING EACH WEEK	\$12,166.92 <u>2/</u>

1/ Annual compensation of \$621,872 divided by 1,840 annual arrivals and departures at a 98 percent completion factor, calculated as follows: 6 dpts x 313 service days x .98 = 1,840.

2/ Subsidy rate per arrival/departure of \$333.97 multiplied by 36 subsidy-eligible arrivals and departures each week.

SERVICE LIST FOR THE STATE OF KANSAS

Air Midwest, Inc.  
Amerijet International, Inc.  
Aspen Airways, Inc.  
Blue Ridge Airlines  
Corporate Airlines, Inc.  
Delta Connection  
Exec Express II, Inc.  
Executive Airlines, Inc.  
Flagship Airlines Inc.  
Heartland Aviation, Inc.  
Lone Star Airlines, Inc.  
Mesa Airlines, Inc.  
Metroflight, Inc.  
Midway Airlines, Inc.  
Midwest Express Airlines, Inc.  
Multi Aero, Inc.  
Northwest Airlink  
Redwing Airways, Inc.  
Renown Aviation, Inc.  
Trans States Airlines, Inc.  
Westward Airways, Inc.

Louis Andrews  
Ken Bannon  
E.B. Freeman  
Douglas Gumula  
Ben Harrison  
A. Edward Jenner  
Keith Kahle  
John McFarlane  
Robert Wigmore